IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 3 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
PRATIBHA SYNTEX LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR SN SOPARKAR, SR. ADVOCATE, with Mrs. SWATI SOPARKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 16/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

At the instance of the revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench 'A', has referred the following questions for the opinion of this court under the provisions of sec. 256(2) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') :

For Assessment Year 1992-93

(1) Whether, in the facts and circumstances of the case, the ITAT was justified in law in holding that the proviso to section 80HHC(3) should be read independent of clause (a) or (b) or (c) and not together so as to ignore the negative figure or a loss which may work out as per the aforesaid clause?

(2) Whether, in the facts and circumstances of the case, the ITAT was justified in holding that provisions of section 80AB do not apply to section 80HHC despite its overriding effect given with reference to 'Chapter VIA under the heading “C” deduction in respect of certain incomes' under which section 80HHC falls?

For Assessment Year 1993-94

(1) Whether, in the facts and circumstances of the case, the ITAT was justified in law in holding that the proviso to section 80HHC(3) should be read independent of clause (a) or (b) or (c) and not together so as to ignore the negative figure or a loss which may work out as per the aforesaid clause?

(2) Whether, in the facts and circumstances of the case, the ITAT was justified in holding that provisions of section 80AB do not apply to section 80HHC despite its overriding effect given with reference to 'Chapter VIA under the heading “C” deduction in respect of certain incomes' under which section 80HHC falls?

(3) Whether, in the facts and circumstances of the case, the ITAT was justified in law in holding that notional duty benefit derived by the assessee amounts to cash assistance u/s 28(iiib) of I.T. Act?

2. We have heard Sr. Standing Counsel Shri M.R. Bhatt appearing for the applicant and Sr. Advocate Shri S.N. Soparkar for the respondent-assessee. The learned advocates have fairly submitted that the first question

for both the assessment years has been now covered against the assessee because of the legislative amendment to Sec. 80HHC(3) under the Taxation Laws (Amendment) Act, 2005. In view of the said fact, we do not answer the said question but refer the matter to the Tribunal so that the case can be considered afresh after considering amendment to Sec. 80HHC and after hearing the parties. We, therefore, decline to answer the said question for Assessment Years 1992-93 & 1993-94.

3. So far as question No. 2 for both the assessment years is concerned, it has been covered by the judgment delivered by the Hon'ble Supreme Court in the case of IPCA Laboratory Ltd. v. Deputy Commissioner of income-tax, 266 ITR 521 against the assessee. We, therefore, answer the said question for both the assessment years in the negative, i.e. in favour of the revenue and against the assessee.

4. So far as the third question referred to this court for the Assessment Year 1993-94 is concerned, looking to the aforesaid development in the case, b virtue of the amendment to Sec. 80HHC and because of the peculiar facts of the case, including the judgment delivered by the

Hon'ble Supreme Court referred to hereinabove, and the amendment made to Sec. 80HHC, the question has now become academic and, therefore, we decline to answer the same.

The Reference stands disposed of accordingly with no order as to costs.

The Registry is directed to forward the judgment to the Tribunal forthwith so as to enable the Tribunal to pass appropriate order after reconsidering the matter in the light of the opinion rendered by this court.

(Anil R. Dave, J.)

(K.A. Puj, J.)

(hn)